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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,982	10/17/2003	Donald W. Wooten	4264.030	1385

30589 7590 08/18/2005

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EXAMINER

GREENHUT, CHARLES N

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,982

Applicant(s)

WOOTEN ET AL.

Examiner

Charles N. Greenhut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

I. Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 7, 8, 35, 36 and 60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. Claims 7, 8, 35, and 36 recite the limitation "the platform" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

1.2. Claim 60 recites the limitation "the lift assembly" in line 9. There is insufficient antecedent basis for this limitation in the claim.

II. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 1, 2, 6-16, 20-30, and 34-42 is/are rejected under 35 U.S.C. 102(b) as being anticipated by McWHA (US 5,871,327).

1.1. With respect to claim 1, McWHA discloses a load supporting structure, a bracket assembly attachable to the mounting structure and a lift assembly.

1.2. With respect to claim 2, McWHA discloses all elements of claim 1 and additionally discloses a first and second flange (4A)/(4B) having distal end portions, the flanges

connected to the load supporting structure and extending over and encompassing at least a portion of the mounting structure, the mounting structure disposed between distal end portions of the flanges.

- 1.3. With respect to claim 6, McWHA discloses all elements of claim 1 and additionally discloses a lift member connected to the load supporting structure.
- 1.4. With respect to claim 7, McWHA discloses all elements of claim 6 and additionally discloses a platform (3), and a lift member (2) connected to the platform.
- 1.5. With respect to claim 8, McWHA discloses all elements of claim 7 and additionally discloses the lift member pivotally connected to the platform (Figs. 2a-3b).
- 1.6. With respect to claim 9, McWHA discloses all elements of claim 6 and additionally discloses the lift assembly pivotally connected to the load supporting structure (Figs. 2a-3b).
- 1.7. With respect to claim 10, McWHA discloses all elements of claim 6 and additionally discloses a lever (7) connected to the lift member permitting the lift assembly to be folded (Figs. 2a-3b).
- 1.8. With respect to claim 11, McWHA discloses all elements of claim 10 and additionally discloses the lever connected to the lift member near the distal end.
- 1.9. With respect to claim 12, McWHA discloses all elements of claim 11 and additionally discloses the lever pivotally connected to the lift member.
- 1.10. With respect to claim 13, McWHA discloses all elements of claim 6 and additionally discloses at least one guide (5A)/(5B) connected to the lift member for guiding the load onto the lift member.

- 1.11. With respect to claim 14, McWHA discloses all elements of claim 13 and additionally discloses the guide integrally connected to the lift member (Fig 1).
- 1.12. With respect to claim 15, McWHA discloses a load supporting structure, a bracket assembly attachable to a tailgate (Col. 1 Li. 15-16) and a lift assembly.
- 1.13. With respect to claim 16, McWHA discloses all elements of claim 15 and additionally discloses a first and second flange (4A)/(4B) having distal end portions, the flanges connected to the load supporting structure and extending over and encompassing at least a portion of the tailgate, the tailgate disposed between distal end portions of the flanges.
- 1.14. With respect to claim 20, McWHA discloses all elements of claim 15 and additionally discloses a lift member connected to the load supporting structure.
- 1.15. With respect to claim 21, McWHA discloses all elements of claim 20 and additionally discloses a platform, and a lift member connected to the platform.
- 1.16. With respect to claim 22, McWHA discloses all elements of claim 21 and additionally discloses the lift member pivotally connected to the platform.
- 1.17. With respect to claim 23, McWHA discloses all elements of claim 20 and additionally discloses the lift assembly pivotally connected to the load supporting structure.
- 1.18. With respect to claim 24, McWHA discloses all elements of claim 20 and additionally discloses a lever connected to the lift member permitting the lift assembly to be folded.

- 1.19. With respect to claim 25, McWHA discloses all elements of claim 24 and additionally discloses the lever connected to the lift member near the distal end.
- 1.20. With respect to claim 26, McWHA discloses all elements of claim 24 and additionally discloses the lever pivotally connected to the lift member.
- 1.21. With respect to claim 27, McWHA discloses all elements of claim 20 and additionally discloses at least one guide connected to the lift member for guiding the load onto the lift member.
- 1.22. With respect to claim 28, McWHA discloses all elements of claim 27 and additionally discloses the guide integrally connected to the lift member.
- 1.23. With respect to claim 29, McWHA discloses a load supporting structure, a bracket assembly attachable to the mounting structure and a lift assembly pivotally connected to the load supporting structure.
- 1.24. With respect to claim 30, McWHA discloses all elements of claim 29 and additionally discloses a first and second flange having distal end portions, the flanges connected to the load supporting structure and extending over and encompassing at least a portion of the tailgate, the tailgate disposed between distal end portions of the flanges.
- 1.25. With respect to claim 34, McWHA discloses all elements of claim 29 and additionally discloses a lift member connected to the load supporting structure.
- 1.26. With respect to claim 35, McWHA discloses all elements of claim 34 and additionally discloses a platform, and a lift member connected to the platform.

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- 1.27. With respect to claim 36, McWHA discloses all elements of claim 35 and additionally discloses the lift member pivotally connected to the platform.
 - 1.28. With respect to claim 37, McWHA discloses all elements of claim 34 and additionally discloses the lift assembly pivotally connected to the load supporting structure.
 - 1.29. With respect to claim 38, McWHA discloses all elements of claim 34 and additionally discloses a lever connected to the lift member permitting the lift assembly to be folded.
 - 1.30. With respect to claim 39, McWHA discloses all elements of claim 38 and additionally discloses the lever connected to the lift member near the distal end.
 - 1.31. With respect to claim 40, McWHA discloses all elements of claim 38 and additionally discloses the lever pivotally connected to the lift member.
 - 1.32. With respect to claim 41, McWHA discloses all elements of claim 34 and additionally discloses at least one guide connected to the lift member for guiding the load onto the lift member.
 - 1.33. With respect to claim 42, McWHA discloses all elements of claim 41 and additionally discloses the guide integrally connected to the lift member.
2. Claim(s) 43, 48, 50, 52-55, 60, and 61 is/are rejected under 35 U.S.C. 102(b) as being anticipated by BRUHN (US 4,275,981)
- 2.1. With respect to claim 43, BRUHN discloses a load supporting structure adapted to support a tire (76), a bracket assembly connected to the load supporting structure (62), a lift assembly comprising a lift member (42) pivotally connected (38) to the

load supporting structure, a lever (54) connected to the lift member to permit folding (56), the lever forming a ramp (Fig. 6).

2.2. With respect to claim 48, BRUHN teaches all elements of claim 43 and additionally teaches the load supporting structure including a platform, and a lift member connected to the platform.

2.3. With respect to claim 50, BRUHN discloses all elements of claim 43 and additionally discloses the lift member connected to the lift member near the distal end of the lift member.

2.4. With respect to claim 52, BRUHN discloses all elements of claim 43 and additionally discloses the lift member having at least one guide (42).

2.5. With respect to claim 53, BRUHN discloses all elements of claim 52 and additionally discloses the guide integrally connected to the lift member.

2.6. With respect to claim 54, BRUHN discloses positioning a lift assembly of a storage rack connected to a vehicle to an extended position wherein a portion of the lift assembly forms a ramp, moving the load across the ramp toward the load supporting structure, and moving the portion of the lift assembly forming the ramp toward the load supporting structure to position the load on the load supporting structure (Fig. 1 generally).

2.7. With respect to claim 55, BRUHN discloses all elements of claim 54 and additionally discloses the portion of the lift assembly forming the ramp is further defined as a lever.

2.8. With respect to claim 60, BRUHN discloses providing a load supporting structure, connecting a bracket assembly to the load supporting structure, and connecting a lift assembly to the load supporting structure.

2.9. With respect to claim 61, BRUHN discloses the product produced by providing a load supporting structure, connecting a bracket assembly to the load supporting structure, and connecting a lift assembly to the load supporting structure.

III. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 3, 4, 17, 18, 31, and 32 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over McWHA in view of ALLEN (US 4,709,840).

1.1. With respect to claim 3, McWHA teaches all elements of claim 2. McWHA fails to teach L-shaped and U-shaped flanges. ALLEN teaches L-shaped (82) and U-shaped (120) flanges. It would have been obvious to one of ordinary skill in the art to modify McWHA with the L-shaped and U-shaped flanges of ALLEN in order to provide conforming surfaces having the ability to selectively, compressively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

1.2. With respect to claim 4, McWHA teaches all elements of claim 2 and additionally teaches an aperture in the flange. McWHA fails to teach the bracket assembly comprising a clamp member, and an adjustment member disposable through the

flange. ALLEN teaches a clamp member positioned between a portion of the flange and mounting structure (22), and an adjustment member (86) disposable through the flange (82). It would have been obvious to one of ordinary skill in the art to modify McWHA with the clamp member, and an adjustment member of ALLEN in order to have the ability to selectively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

1.3. With respect to claim 17, McWHA teaches all elements of claim 16. McWHA fails to teach L-shaped and U-shaped flanges. ALLEN teaches L-shaped and U-shaped flanges. It would have been obvious to one of ordinary skill in the art to modify McWHA with the L-shaped and U-shaped flanges of ALLEN in order to provide conforming surfaces having the ability to selectively, compressively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

1.4. With respect to claim 18, McWHA teaches all elements of claim 16 and additionally teaches an aperture in the flange. McWHA fails to teach the bracket assembly comprising a clamp member positioned between a portion of the flange and tailgate, and an adjustment member disposable through the flange. ALLEN teaches a clamp member positioned between a portion of the flange and tailgate, and an adjustment member disposable through the flange. It would have been obvious to one of ordinary skill in the art to modify McWHA with the clamp member, and an adjustment member of ALLEN in order to have the ability to selectively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

- 1.5. With respect to claim 31, McWHA teaches all elements of claim 30. McWHA fails to teach L-shaped and U-shaped flanges. ALLEN teaches L-shaped and U-shaped flanges. It would have been obvious to one of ordinary skill in the art to modify McWHA with the L-shaped and U-shaped flanges of ALLEN in order to provide conforming surfaces having the ability to selectively, compressively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.
- 1.6. With respect to claim 32, McWHA teaches all elements of claim 30 and additionally teaches an aperture in the flange. McWHA fails to teach the bracket assembly comprising a clamp member, and an adjustment member disposable through the flange. ALLEN teaches a clamp member positioned between a portion of the flange and tailgate (Fig. 4), and an adjustment member disposable through the flange for compressing engagement of the tailgate. It would have been obvious to one of ordinary skill in the art to modify McWHA with the clamp member, and an adjustment member of ALLEN in order to have the ability to selectively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.
2. Claim(s) 5, 19, and 33 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over McWHA in view of ALLEN and further in view of SINKEY (US 3,387,754)

- 2.1. With respect to claim 5, McWHA in view of ALLEN teaches all elements of claim 4. McWHA additionally teaches an aperture. McWHA fails to teach a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture. SINKEY teaches a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture (Fig. 1 generally). It would

have been obvious to one of ordinary skill in the art to modify McWHA in view of ALLEN with the threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture of SINKEY in order to removably connect the bracket to the load supporting structure.

2.2. With respect to claim 19, McWHA in view of ALLEN teaches all elements of claim 18. McWHA additionally teaches an aperture. McWHA fails to teach a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture. SINKEY teaches a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture. It would have been obvious to one of ordinary skill in the art to modify McWHA in view of ALLEN with the threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture of SINKEY in order to removably connect the bracket to the load supporting structure.

2.3. With respect to claim 33, McWHA in view of ALLEN teaches all elements of claim 32. McWHA additionally teaches an aperture. McWHA fails to teach a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture. SINKEY teaches a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture. It would have been obvious to one of ordinary skill in the art to modify McWHA in view of ALLEN with the threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture of SINKEY in order to removably connect the bracket to the load supporting structure.

3. Claim(s) 44-47, and 58 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRUHN in view of ALLEN.

3.1. With respect to claim 44, BRUHN teaches all elements of claim 43. BRUHN further teaches a first and second flange (62) connected to the load supporting structure and encompassing at least a portion of the mounting structure so that the mounting structure is disposed between the flanges. BRUHN fails to teach the mounting structure being a tailgate. ALLEN teaches the mounting structure being a tailgate (Fig. 4). It would have been obvious to one of ordinary skill in the art to modify BRUHN with the mounting structure being a tailgate of ALLEN in order to further separate the points of contact with the vehicle thereby increasing the racks ability to withstand moment loading.

3.2. With respect to claim 45, BRUHN in view of ALLEN teaches all elements of claim 44. BRUHN fails to teach L-shaped and U-shaped flanges. ALLEN teaches L-shaped and U-shaped flanges. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the L-shaped and U-shaped flanges of ALLEN in order to provide conforming surfaces having the ability to selectively, compressively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

3.3. With respect to claim 46, BRUHN in view of ALLEN teaches all elements of claim 44. BRUHN additionally teaches an aperture in the flange. BRUHN fails to teach the bracket assembly comprising a clamp member, and an adjustment member disposable through the flange. ALLEN teaches a clamp member positioned between a portion of the flange and mounting structure, and an adjustment member disposable through the

flange. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the, clamp member, and an adjustment member of ALLEN in order to have the ability to selectively secure the cargo rack to, or release the cargo rack from, the body of the vehicle.

3.4. With respect to claim 47, BRUHN in view of ALLEN teaches all elements of claim 46. BRUHN additionally teaches an aperture, a threaded bore, the aperture alignable with the threaded bore and a threaded bolt positionable through the aperture (Fig. 5 generally).

3.5. With respect to claim 58, BRUHN teaches all elements of claim 54. BRUHN fails to teach mounting the storage rack to the tailgate of the vehicle. ALLEN teaches the mounting to the tailgate. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the mounting structure being a tailgate of ALLEN in order to further separate the points of contact with the vehicle thereby increasing the racks ability to withstand moment loading.

4. Claim(s) 49, 51, 56, and 57 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRUHN in view of McWHA.

4.1. With respect to claim 49, BRUHN teaches all elements of claim 48. BRUHN fails to teach the lift member pivotally connected to the platform. McWHA teaches the lift member pivotally connected to the platform. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the pivotal connection of McWHA in order to facilitate operation by allowing the operator to generate torque about the tire from a variety of angles and also to consume less space in a folded configuration.

- 4.2. With respect to claim 51, BRUHN teaches all elements of claim 43. BRUHN fails to teach the lever pivotally connected to the lift member. McWHA teaches the lever pivotally connected to the lift member. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the pivotal connection of McWHA in order to facilitate operation by allowing the operator to generate torque about the tire from a variety of angles and also to consume less space in a folded configuration.
- 4.3. With respect to claim 56, BRUHN teaches all elements of claim 55. BRUHN fails to teach the lever pivotally connected to the lift member. McWHA teaches the lever pivotally connected to the lift member. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the pivotal connection of McWHA in order to facilitate operation by allowing the operator to generate torque about the load from a variety of angles and also to consume less space in a folded configuration.
- 4.4. With respect to claim 57, BRUHN teaches all elements of claim 55. BRUHN fails to teach moving the lever and the lift member to a folded position to form a cage capable of retaining the load on the load supporting structure. McWHA teaches moving the lever and the lift member to a folded position to form a cage capable of retaining the load on the load supporting structure. It would have been obvious to one of ordinary skill in the art to modify BRUHN with the additional step of moving the lever and the lift member to a folded position to form a cage of McWHA in order to provide counterbalancing support points thereby increasing the stability of the load during the loading process.

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5. Claim(s) 59 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over BRUHN in view of ALLEN and further in view of SINKEY.

5.1. With respect to claim 59, BRUHN in view of ALLEN teaches all elements of claim 58. BRUHN fails to teach lowering the tailgate when the storage rack is connected thereto. SINKEY teaches lowering the tailgate when the storage rack is connected thereto (Fig. 4). It would have been obvious to one of ordinary skill in the art to modify BRUHN in view of ALLEN with the tailgate, lowerable while the storage rack is connected thereto of SINKEY in order to access the contents of the cargo area of the vehicle via the tailgate without having to remove the rack from the vehicle.

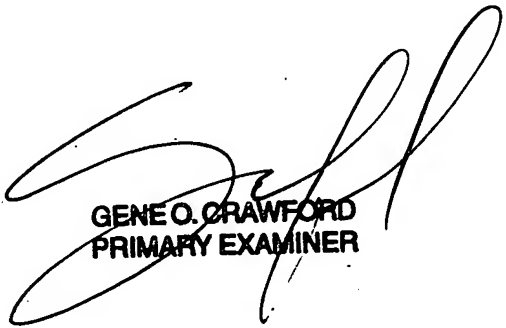
IV. Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information

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about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



GENE O. CRAWFORD
PRIMARY EXAMINER